



Children, Families, Health, and Human Services Interim Committee

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60th Montana Legislature

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TO: Committee members
FROM: Lisa Mecklenberg Jackson, Staff Attorney
RE: Administrative Rule Activity
DATE: June 21, 2007

The Department of Public Health and Human Services has filed the following rule notices with the Secretary of State's Office for publication in the Montana Administrative Register (MAR):

(All notices are available online at:

<http://www.dphhs.mt.gov/legalresources/recentlyadoptedrules/index.shtml>)

Notices of Adopted Rules:

I.

MAR 2007 Issue No. 12 (June 21, 2007), MAR Notice No. 37-401, NOTICE OF AMENDMENT -- a public hearing was held May 2, 2007 to consider amendments to rules pertaining to vocational rehabilitation program financial needs standards and payment for services. No one appeared at the hearing to testify and no written comments were received. The Department adopted the rules as proposed, broadening the standards for inclusion in the vocational rehabilitation program and incorporating the most recent set of relevant property level income amounts.

II.

MAR 2007 Issue No. 7 (April 12, 2007), MAR Notice No. 37-399, NOTICE OF AMENDMENT -- a public hearing was held January 31, 2007 to consider amendments to rules pertaining to vocational rehabilitation IPE care requirements. No one appeared at the hearing to testify and no written comments were received. The Department adopted the rules as proposed. The Department adopted amendments changing the time period from six months to 120 days allowed for the development of an Individualized Plan for Employment (IPE) which is the planning process engaged in for the purpose of determining what particular services should be made available through the vocational rehabilitation program to a consumer of vocational rehabilitation services. The Department proposed the change based upon the direction of the Rehabilitation Services Administration (RSA), an administrative entity of the U.S. Department of Education's Office of Special Education and Rehabilitative Services.

III.

MAR 2007 Issue No. 6 (March 22, 2007), MAR Notice No. 37-392, NOTICE OF ADOPTION AND REPEAL -- a public hearing was held October 25, 2006 to consider amendments to rules pertaining to tattooing and body piercing. A number of individuals appeared at the hearing to testify and 33 comments were responded to. The Department adopted 23 new rules and repealed

18 rules with some changes from the original proposal based on comments received. Annual license fees are \$135, \$75 for those establishments only piercing ear lobes. Consent forms for those under 18 must be signed "in person" by the parent. The Department stated that establishing a minimum age for tattooing and body piercing is beyond the scope of the Department's authority, and beyond the scope of the authorizing statutes as set forth in Title 50, chapter 48, MCA.

IV.

MAR 2007 Issue No. 5 (March 8, 2007), MAR Notice No. 37-397, NOTICE OF AMENDMENT -- a public hearing was held January 12, 2007 to consider amendments to rules pertaining to temporary assistance for needy families (TANF) incorporation of policy manuals. No one appeared at the hearing to testify and no written comments were received. The Department adopted two rules as proposed which took effect on January 1, 2007 and incorporated several revisions to the TANF policy manual, based in part of the TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005. The amendments added the words "minus business expenses" to the self employment hour count beyond the first two months to be counted as allowable work activity. The rules have also been updated to reflect the changes in the number and definitions of "secondary" work activities TANF participants can be involved in while fulfilling the mandatory work requirements as outlined by TANF Reauthorization language. Participants must now participate in work activities a total of 132 hours per month for single parent households and 152 hours per month per individual for two-parent households. The amendments also added on the job training to the list of allowable activities.

V.

MAR 2007 Issue No. 5 (March 8, 2007), MAR Notice No. 37-400, NOTICE OF AMENDMENT -- a public hearing was held February 5, 2007 to consider amendments to rules pertaining to Medicaid assistance. No one appeared at the hearing to testify and no written comments were received. The Department adopted the rules as proposed. The Department adopted three amendments which serve to incorporate by reference the Medicaid policy manuals, clarify in what instances the income and resources of an applicant's relative will be considered in determining the applicant's eligibility for Medicaid, and correct an error made in a previous rule amendment. The amendments to 37.82.101 are applied retroactively to January 1, 2007.

VI.

MAR 2007 Issue No. 5 (March 8, 2007), MAR Notice No. 37-398, NOTICE OF AMENDMENT -- on January 11, 2007, the Department published an amendment to rules pertaining to components of quality assessment activities. No hearing was held and no written comments or testimony were received. The Department adopted the rules as proposed. ARM 37.108.507 requires health carriers to report their quality assessment activities to the Department using Health Plan Employer Data and Information Set (HEDIS) measures, nationally-utilized measures that are updated annually. The HEDIS standards change somewhat each year, the rule must be updated annually to reflect the current year's measures and ensure that national comparisons are possible. The rule changes will be applied retroactively to January 1, 2007

because HEDIS measures and health carriers measure on a January through December calendar year.

VII.

MAR 2007 Issue No. 2 (January 25, 2007), MAR Notice No. 37-396, NOTICE OF ADOPTION -- a public hearing was held December 13, 2006 to consider a new rule pertaining to the determination of unenforceable case status in child support cases. One written comment was received and responded to. The Department adopted the rule as proposed which established the criteria in categorizing a child support case as unenforceable. These criteria include no payments posted to the case in the last 12 months, no payments from the federal and state offset program have been received in the past two years, the CSED has not identified any attachable financial institution accounts belonging to the obligor parent or the noncustodial parent, etc. If a case in unenforceable, it may be closed under federal case closure criteria defined in 45 CFR 303.11.

VIII.

MAR 2007 Issue No. 1 (January 11, 2007), MAR Notice No. 37-394, NOTICE OF AMENDMENT -- a public hearing was held December 4, 2006 to consider amendments to rules pertaining to fair hearing procedures and temporary assistance for needy families (TANF). No one appeared at the hearing to testify and no written comments were received. The Department adopted ten rules as proposed. The Department substituted Temporary Assistance for Needy Families (TANF) for families achieving independence in Montana (FAIM) throughout the rules as TANF supersedes the FAIM Cash Assistance Program, added several definitions to the TANF rules, and updated the rules to reflect the federal definitions of allowable work activities as defined in TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005. ARM 37.78.206 was updated to fulfill the mandate of SB 29, 2005, which removed the disqualification for an individual convicted of a drug-related felony offense from receiving TANF cash assistance if he or she is actively complying with the conditions of supervision, treatment, or whose sentence associated to the felony conviction has been discharged. The rule was also updated to reflect current policy indicating intentional program violators are not eligible for TANF cash assistance.

IX.

MAR 2007 Issue No. 1 (January 11, 2007), MAR Notice No. 37-389, NOTICE OF ADOPTION AND AMENDMENT -- a public hearing was held September 13, 2006 to consider amendments to rules pertaining to the Older Blind Program. Fourteen comments were responded to. The Department adopted five new rules and amended one rule. New definitions were added, eligibility criteria was changed, qualified staff will determine the need for program services, and a category for consumers who are totally blind was added to the list of criteria used to limit the service area if necessary.

Notice of Decision:

X.

MAR 2007 Issue No. 2 (January 25, 2007), MAR Notice No. 37-393, NOTICE OF DECISION - a public hearing was held November 15, 2006 to consider two new rules, amendments to 17

rules, and repeal of three rules pertaining to child support guidelines. The Department decided in light of public comments received, it would not pursue the adoption, amendment, and repeal of these rules at this time.

Notices of Proposed Rules:

XI.

MAR 2007 Issue No. 10 (May 24, 2007), MAR Notice No. 37-406, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of the proposed adoption of one new rule and the amendment of three rules pertaining to the disease management program. A hearing was scheduled for June 13, 2007 in the auditorium of the Department of Public Health and Human Services Bureau, 111 N. Sanders, Helena, Montana. The public comment period ran to June 21, 2007. The rules establish criteria for determining chronic diseases managed under the disease management program and incorporate changes to Montana's Medicaid disease (DM) program called Nurse First. The amendments delete the list of chronic medicals conditions (asthma, diabetes, congestive heart failure, chronic pain, and cancer) and add language stating the criteria Medicaid will use to determine which conditions and age groups are selected for DM program management. The rule amendments also add qualified individual program (QI) clients to the list of Medicaid clients excluded from the program, as well as dual eligibility clients (Medicare and Medicaid). The rationale for the rules is that "these changes allow the Department flexibility to determine which chronic conditions will be managed in the Nurse First program and which clients will be eligible. Service delivery through disease management organizations (DMOs) changes frequently. The Nurse First program must have flexibility to meet client needs and respond to changes in appropriation."

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

XII.

MAR 2007 Issue No. 10 (May 24, 2007), MAR Notice No. 37-407, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of proposed amendment of seven rules pertaining to the case management services for youth with serious emotional disturbance. A hearing was scheduled for June 21, 2007 in the Wilderness Room, 2401 Colonial Drive, Helena, Montana. The public comment period runs to June 28, 2007. The Department proposes to make the definitions in the rules and service coverage for targeted case management (TCM) for seriously emotionally disturbed youth consistent with the core functions currently billable under Medicaid. As defined by the U.S. Dept. of Health and Human Services Centers for Medicare and Medicaid Services (CMS), these functions include assessment; case planning; coordination, referral, and advocacy; and monitoring and follow-up. The Department is proposing that TCM be added to the list of services that require prior authorization. TCM services would be subject to prior authorization after a client received 60 units of service in a state fiscal year. The Department is proposing amendments to the definition of "serious emotional disturbance," the definition and function of "targeted case management" and the certificate of need requirement for residential psychiatric

care to be consistent with federal standards. The Department is also proposing to change the requirement that a youth needs to have a serious emotional disturbance for the first 24 individual and family outpatient sessions in a state fiscal year. To receive additional individual and family outpatient therapy services, the youth would need to have a serious emotional disturbance. This change is being proposed to intervene earlier and allow for the treatment of milder mental health diagnoses. The rationale for the proposed amendments to the rules is that they are intended primarily to allow improved treatment management of children with serious emotional disorders through utilization review of children's targeted case management.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted. I attended the hearing on June 21, 2007 and there were no proponents or opponents to the proposed rule amendments. Several individuals did ask questions, however, regarding the use of the term "the case manager, **or other individual designated by the department**" in regard to signing the certificate of need for treatment. Department personnel reported this will not create any additional bottleneck or change current practices of the department.

XIII.

MAR 2007 Issue No. 9 (May 10, 2007), MAR Notice No. 37-403, NOTICE OF PROPOSED AMENDMENT -- the Department has filed a NOTICE OF PROPOSED AMENDMENT in the matter of the amendment of ARM 37.12.401 pertaining to laboratory testing fees. The Department proposed to modify the rules to reference, as of July 1, 2007, the 2007 version of the state laboratory fee list, which provides an average increase of 9.7% in the cost of lab services. The revised fees are necessary to keep the fees charged for lab service in line with the actual current cost associated with providing that service. No public hearing was contemplated.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

XIV.

MAR 2007 Issue No. 9 (May 10, 2007), MAR Notice No. 37-404, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of the proposed amendment of nine rules pertaining to the Low Income Energy Assistance Program (LIEAP) and Low Income Weatherization Assistance Program (LIWAP). A hearing was scheduled for May 30, 2007 in the Wilderness Conference Room of the Department of Public Health and Human Services Colonial Building, 2401 Colonial Drive, Helena, Montana. The public comment period ran to June 7, 2007. The rules establish the updated version of the federal poverty guidelines to be used to set income standards and benefit amounts for the current heating season. A new provision is being added to specify that a household's eligibility and benefit amount are based on the household's circumstances at the time the application is being processed. The Department proposes to extend the heating season beyond April 20 in order to take advantage of possible additional funding for LIEAP later in the heating season. The Department intends to apply the amendments to the LIEAP rules retroactively to August 1, 2006. In addition, the Department proposes changes to the Low

Income Weatherization Assistance Program (LIWAP) by setting priorities for Weatherization services since LIWAP funds are limited, and providing that delivery of weatherization services may be deferred to a later date if providing the services would pose a threat to the health and safety of the person living in the dwelling.

TECHNICAL NOTE: The notice was reviewed by committee staff and staff has the following comments:

No statement of reasonable necessity was provided for the amendments to Rule 37.70.602. Subsection (6)(b) of MCA 2-4-305 specifically provides that a statement of reasonable necessity for a change in rule must state the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. That subsection further provides that reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking. In speaking with the Department's rule reviewer, Barbara Hoffman, she agreed no rational had been provided for amendment to Rule 37.70.602 and that rule would be re-noticed.

XV.

MAR 2007 Issue No. 9 (May 10, 2007), MAR Notice No. 37-405, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of the proposed amendment of twelve rules pertaining to Temporary Assistance for Needy Families (TANF). A hearing was scheduled for May 30, 2007 in the Wilderness Conference Room of the Department of Public Health and Human Services Colonial Building, 2401 Colonial Drive, Helena, Montana. The public comment period ran to June 7, 2007. The amendments seek to bring the Montana rules into compliance with the federal TANF Reauthorization regulations. Specifically, the amendments provide that individuals who are incarcerated will no longer be eligible for assistance as these individuals are not able to participate in allowable work activities as required by the TANF Reauthorization regulations. Nor are incarcerated individuals considered absent from the home for TANF purposes. The Department is proposing more specific criteria for identifying individuals who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan (FIA/EP) in order to be eligible for TANF cash assistance. Reference to Post Employment Services (PES) and Post Employment Training and Education (PETS) payments were removed as these payments are no longer available due to lack of funding. Individuals who request a fair hearing to dispute a sanction and who receive an overpayment pending the hearing are subject to recovery of the overpayment by 25% or \$25 as opposed to 10% or \$10.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

XVI.

MAR 2007 Issue No. 7 (April 12, 2007), MAR Notice No. 37-402, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of the proposed amendment of one new rule pertaining to the resource

based relative value scale (RBRVS). A hearing was scheduled for May 2, 2007 in the auditorium of the Department of Public Health and Human Services Bureau, 111 N. Sanders, Helena, Montana. The public comment period ran to May 10, 2007. The rules relate to Medicaid reimbursement. The Montana Medicaid program pays enrolled providers for services to eligible individuals. The purpose of the rule amendment is to update the Resource Based Relative Value Scale (RBVS) fees paid to enrolled providers in accordance with the most recently published relative value units (RVUs) released by the Centers for Medicare and Medicaid Services (CMS). The rule amendment is necessary to incorporate the updated RVUs published in the Federal Register in December 2006. The updated RVUs was effective for the Medicare program on January 1, 2007. The change in the Montana Medicaid fees is effective July 1, 2007.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.